

# **EXHIBIT E**

Feb-22-08 02:28pm From: Buchalter Nemer SF

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T-250 P.002/005 F-637

1 STEPHEN T. O'NEILL (115132)  
2 ROBERT A. FRANKLIN (091653)  
3 MURRAY & MURRAY  
4 A Professional Corporation  
5 19400 Stevens Creek Blvd., Suite 200  
6 Cupertino, CA 95014-2548  
7 Telephone: (650) 852-9000; (408) 907-9200  
8 Facsimile: (650) 852-9244  
9 Email: soneill@murraylaw.com  
10 Email: rfranklin@murraylaw.com

11 Attorneys Specially Appearing for Defendant  
12 FRESH 'N HEALTHY, INC.

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

15 ASA FARMS, INC., a California  
16 corporation and BRAGA RANCH,

17 Plaintiffs,

18 vs.

19 FRESH 'N HEALTHY, INC., a Delaware  
20 corporation, MARK WILLIAMS, an  
21 individual; JACK PARSON, an individual;  
22 STEVEN CINELLI, an individual; CHAD  
23 HAGEN, an individual, SANTOS  
24 MARTINEZ, an individual; DON BEAM,  
25 an individual; DARRYL NICHOLSON, an  
26 individual; RICHARD MAY, an  
27 individual; THOMAS COLOGNA, an  
28 individual; PRESTWICK PARTNERS,  
LLC, a California limited liability  
company; SOLSTICE VENTURE  
PARTNERS, LLC, a business entity form  
unknown; VFINANCE INVESTMENTS, a  
business entity form unknown; FMP  
VINEYARD, LLC, a New Mexico limited  
liability company, BUTTONWOOD  
OPTION, LLC, a business entity form  
unknown; DW, LLC, a business entity  
form unknown; M SOLAZZO TRUST  
2002; P. SOLAZZO 1998; GIBBONS  
FAMILY TRUST; BIXLER TRUST;  
STEIGERWALD TRUST and CARTER  
TRUST, and DOES 1 through 50,  
inclusive,

Defendants.

Case No. C08-00122 PVT

STIPULATION TO MODIFY  
PRELIMINARY INJUNCTION

(RE: DOCKET NO. 2)

BN 1746173v2

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STIPULATION TO MODIFY PRELIMINARY INJUNCTION - CASE NO. C08-00122 PVT

Received Time Feb. 22. 2:43PM

Feb-22-08 02:29pm From: Buchalter Nemer SF

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T-250 P 003/005 F-637

1 This Stipulation, made and entered into by and between Plaintiffs ASA Farms, Inc. and  
2 Braga Ranch ("Plaintiffs") and Defendant Fresh 'N Healthy, Inc. ("Defendant") is based upon the  
3 following facts:

4 A. On or about January 29, 2008 this Court made and entered its Order Granting  
5 Plaintiffs' Motion For Preliminary Injunction (the "Order"), which prevents, among other things,  
6 Defendant from selling or transferring "any or all assets covered by or subject to the trust  
7 provisions of the PACA without agreement of the parties or until further order of this Court."  
8 [Order 2:6-11.]

9 B. Order further provides that the assets subject to the Order include all assets of  
10 Defendant unless Defendant "can prove that a particular asset" is not subject to the PACA, with  
11 the burden of proof on the Defendant.

12 C. Defendant contends, and Plaintiffs reserve their rights with respect to such  
13 contentions, that its machinery, fixtures, equipment and intellectual property were purchased with  
14 non-PACA assets, including paid in capital and loans from, among others, Comerica Bank.

15 D. Defendant is in default of its obligations to its lender Comerica Bank and has  
16 ceased to conduct business. The net realizable value of Defendant's machinery, fixtures,  
17 equipment and intellectual property is at risk of diminution due to lack of security, lack of  
18 maintenance and the accrual of rents and other storage charges. Defendant desires to sell all or  
19 substantially all of its machinery, fixtures, equipment and intellectual property in one or more  
20 private sales, as summarized on Exhibit A hereto. Comerica Bank, as secured lender, has  
21 consented to such sales of its collateral.

22 E. In order to preserve Plaintiffs' rights, if any, in and to the proceeds of the  
23 machinery, fixtures, equipment and intellectual property the parties have agreed to the entry of an  
24 order modifying the Order on the terms set forth below.

25 **STIPULATION**

26 IT IS HEREBY STIPULATED AND AGREED that this Court may make and enter its  
27 order as follows:

28 1. Defendant is hereby authorized to sell, in one or more private sales, its machinery,

BN 1746173v2

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**STIPULATION TO MODIFY PRELIMINARY INJUNCTION - CASE NO. C08-00122 PVT**

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1 fixtures, equipment and intellectual property, including labels, packaging and unregistered trade  
2 names and trademarks, provided, however, that the proceeds of such sale or sales shall be held in  
3 a segregated account at Comerica Bank subject to any and all claims of Plaintiffs, if any, to assert  
4 PACA rights thereto.

5 2. Except as expressly set forth, nothing herein contained shall waive, alter or modify  
6 the rights of the parties under the Order, and the segregated proceeds shall be subject to Plaintiffs'  
7 PACA rights, if any, to the same extent and with the same validity and priority as such rights  
8 attached to the machinery, fixtures, equipment and intellectual property itself.

9  
10 DATED: February \_\_\_\_, 2008

MURRAY & MURRAY  
A Professional Corporation

11  
12  
13 By: \_\_\_\_\_

14 Attorneys Specially Appearing for Defendant  
15 FRESH 'N HEALTHY, INC.

16 DATED: February 21, 2008

LOMBARDO & GILLES, LLP

17  
18 By:  \_\_\_\_\_

19 Attorneys for Plaintiffs  
20 ASA FARMS, INC., and BRAGA RANCH

21  
22 Comerica Bank hereby consents to entry of the foregoing order and agrees to be bound  
23 thereby.

24 DATED: February 22, 2008

BUCHALTER NEMER  
A Professional Corporation

25  
26 By:  \_\_\_\_\_

27 ROBERT E. IZMIRIAN  
28 Attorneys for  
COMERICA BANK

BN 1746173v2

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STIPULATION TO MODIFY PRELIMINARY INJUNCTION - CASE NO. C08-00122 PVT

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1 fixtures, equipment and intellectual property, including labels, packaging and unregistered trade  
2 names and trademarks, provided, however, that the proceeds of such sale or sales shall be held in  
3 a segregated account at Comerica Bank subject to any and all claims of Plaintiffs, if any, to assert  
4 PACA rights thereto.

5 2. Except as expressly set forth, nothing herein contained shall waive, alter or modify  
6 the rights of the parties under the Order, and the segregated proceeds shall be subject to Plaintiffs'  
7 PACA rights, if any, to the same extent and with the same validity and priority as such rights  
8 attached to the machinery, fixtures, equipment and intellectual property itself.

9  
10 DATED: February 22, 2008

MURRAY & MURRAY  
A Professional Corporation

11  
12 By: Robert A. Franks

13  
14 Attorneys Specially Appearing for Defendant  
FRESH 'N HEALTHY, INC.

15  
16 DATED: February \_\_\_\_\_, 2008

LOMBARDO & GILLES, LLP

17  
18 By: \_\_\_\_\_

19 Attorneys for Plaintiffs  
20 ASA FARMS, INC., and BRAGA RANCH

21  
22 Comerica Bank hereby consents to entry of the foregoing order and agrees to be bound  
23 thereby.

24 DATED: February \_\_\_\_\_, 2008

BUCHALTER NEMER  
A Professional Corporation

25  
26 By: \_\_\_\_\_

ROBERT E. IZMIRIAN  
Attorneys for  
COMERICA BANK

Feb-22-08 02:29pm From: Buchalter Nemer SF

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**EXHIBIT A**

Pending sales of assets of Fresh 'N Healthy, Inc.

1. To Ashman Company, substantially all of the equipment, including processing equipment, farm equipment, pumps, irrigation pipes, forklifts, trucks, trailers and warehouse and office furnishings located in Gilroy and El Centro, California, and trade names and labels Gourmet Veg-Paq, Reda Verde, Ruby Ridge Farms, Truly Vegetarian, Salad Select and Tesoro Farms for \$525,000; and

2. To Ray Nava, substantially all of the equipment and vehicles located at Gilroy Machine, for \$60,000.

BUCHALTER NEMER  
A NATIONAL CORPORATION  
SAN FRANCISCO

BN 1749449v1

Received Time Feb. 22. 2:43PM

# **EXHIBIT F**



Anastassiou & Associates  
Attorneys at Law



Salinas Office  
EFFIE F. ANASTASSIOU  
effiesq@salinasaglaw.com

Associate Attorneys  
  
DENIS KLAVDIANOS  
denisesq@salinasaglaw.com  
  
SCOTT J. ALLEN  
scottesq@salinasaglaw.com

SalinasAgLaw.com  
  
Courier: 242 Capitol Street  
Salinas, CA 93901  
Mailing: P.O. Box 2210, Salinas, CA 93902  
  
Tel. (831) 754-2501  
Fax: (831) 754-0621

Pismo Beach Branch Office  
1035 Longview Avenue  
Pismo Beach, CA\*  
Tel. (805) 773-0750  
Fax (805) 773-0751  
\*All correspondence must  
be sent to Salinas Office

Of Counsel - Santa Maria  
RICHARD C. BRENNEMAN  
brenneman@bjalaw.net  
Tel. (805) 922-4553  
Fax (805) 928-7262

February 27, 2008

Via Facsimile & U.S. Mail

Steve O'Neill, Esq.  
Murray and Murray  
19400 Stevens Creek Blvd., Suite 200  
Cupertino, CA 95014  
(counsel for Fresh 'N Healthy, Inc.)

Kelly Sutherland, Esq.  
Lombardo & Gilles  
P.O. Box 2119  
Salinas, CA 93902  
(counsel for ASA Farms, Inc. and Braga  
Ranch)

Robert Edward Izmirian, Esq.  
Buchalter Nemer  
333 Market Street, 25<sup>th</sup> Floor  
San Francisco, CA 94105  
(counsel for Comerica Bank)

**Re: REQUEST TO STIPULATE TO SHORTEN TIME FOR HEARING  
MOTION TO INTERVENE  
OUR CLIENT: Oceano Packing Company, LLC**

Dear Counsel:

This firm represents Oceano Packing Company, LLC ("Oceano").

Oceano is filing, today, a Motion to Intervene (the "Motion") in the case styled ASA Farms, Inc. v. Fresh 'N Healthy, Inc., N.D.Cal. case number C08-00122. The purpose of this letter is to request a stipulation for an order shortening time for hearing on the Motion. Oceano proposes the following shortened hearing and briefing schedule for the Motion:



Oceano files Motion:	February 27, 2008
Oppositions, if any, to be filed:	On or before March 5, 2008
Oceano's Reply to be filed:	On or before March 7, 2008
Hearing on the Motion:	March 10, 2008

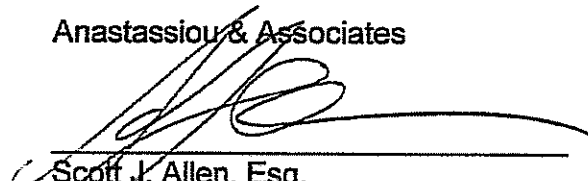
Please let me know whether or not your respective clients will agree to this proposed shortened time for hearing by 2:00 p.m. on Thursday, February 28, 2008.

If I do not receive agreement from all parties to hearing of the Motion on shortened time by 2:00 pm on February 28, 2008, I will proceed to file an ex parte application to shorten time with the Court.

If you have any questions or concerns regarding these matters, please feel free to call me.

Sincerely,

Anastassiou & Associates

  
\_\_\_\_\_  
Scott J. Allen, Esq.  
Attorneys for Oceano Packing Company, LLC

cc: Oceano Packing Company, LLC

F:\OCA\Fresh 'N Healthy\Correspondence\02.27.08 request to stip shortened time.wpd